



**BOX RESPONSES - NO FEE**  
**TRADEMARK**  
4752-0104US1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANT: SAN MIGUEL CORPORATION  
APPL. NO.: 78/495,689  
FILED: October 6, 2004  
MARK: SAN MIGUEL PUREFOODS  
CLASS: Intl. Class 29  
EXAMINER: Cheryl A. Clayton  
LAW OFFICE: 102

AMENDMENT

Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA. 22313-1451

March 10, 2009

Sir:

Due to an Agreement between the Applicant and MTY San Miguel Distributors, LLC., the owner of U.S. Registration No. 2,256,761, the following documentation, amendments and remarks are respectfully submitted in connection with the above-identified application.

DOCUMENTATION

Agreement executed by both the Applicant and MTY San Miguel Distributors, LLC.



**03-10-2009**

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IN THE APPLICATION

Delete the entire identification of goods and substitute with the following:

--MEAT, EXCLUDING DRIED MEAT PRODUCTS, BUT NOT  
EXCLUDING CANNED AND REFRIGERATED MEATS; POULTRY;  
AND GAME; in International Class 29.--

**REMARKS**

The present application was refused registration by the Trademark Attorney due to U.S. Registration No. 2,256,761. A Petition for Cancellation was filed against the registered mark under Cancellation No. 9204494. Due to the Agreement between the two parties, Applicant wishes to amend the present application as set forth hereinabove. Entry of the amended identification of goods into the present application is respectfully requested.

In addition, a copy of the Agreement signed by both parties is also submitted for the review of the Trademark Attorney. As indicated in the Agreement, both parties will take measures to avoid any likelihood of confusion between the respective marks.

Due to the present Amendment and the Agreement signed by both parties, it is respectfully requested that the present application should be approved for publication. An early Notice of Publication is respectfully requested.

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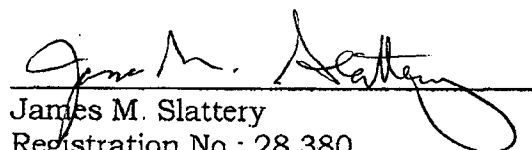
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Please charge any fees or credit any overpayment pursuant to 37 C.F.R. §  
2.6 to Deposit Account No. 02-2448.

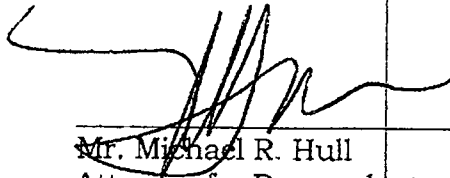
Respectfully submitted,

BIRCH, STEWART, KOLASCH & BIRCH, LLP

By:

  
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Suite 2350  
Chicago, IL. 60606

JMS/BG/adt

**AGREEMENT**

THIS AGREEMENT is entered into between San Miguel Corporation, (hereinafter "Petitioner" or SAN MIGUEL CORPORATION), a corporation organized under the laws of the Philippines, having a place of business at No. 40 San Miguel Avenue, Mandaluyong City, Metro Manila, Philippines, and MTY San Miguel Distributors, LLC, a limited liability corporation, having a place of business at 2904 West 26<sup>th</sup> Street, Chicago, Illinois 60623, (hereinafter "Respondent" or MTY SAN MIGUEL).

WHEREAS, San Miguel Corporation is the owner of the trademark "SAN MIG" under Registration No. 1,212,640 used in connection with beer, registered on October 12, 1982. The first date of use of the mark in conjunction with the goods in commerce was November, 1978.

WHEREAS, San Miguel Corporation is the owner of U.S. Trademark Registration No. "SAN MIGUEL" under Registration No. 917,805 used in connection with beer and ale in International Class 32, was registered on August 3, 1971. The first day of use of the mark in commerce was in 1898.

WHEREAS, San Miguel Corporation is the owner of U.S. Trademark Registration No. 3,232,640, registered on April 24, 2007, for the mark "SAN MIG (Design)" used in connection with beer in International Class 32. The first date of use of the mark in connection with the goods in commerce was September 1, 1997.

WHEREAS, San Miguel Corporation is the owner of U.S. Trademark Registration No. 3,232,641, registered on April 24, 2007, for the mark "SAN MIGUEL" used in connection with beer. The first date of use of the mark in connection with the goods in commerce was September 1, 1997.

WHEREAS, San Miguel Corporation is the owner of the mark "San Miguel Gold Label" under Application No. 78/921,340 filed on June 30, 2006, to be used in connection with "butter, cheese" in International Class 29; and "ice cream, mellorine" in International Class 30. This application was refused registration by the Trademark Examiner in the USPTO on the contention that the mark would be likely to be confused with U.S. Registration No. 2,256,761.

WHEREAS, San Miguel Corporation is the owner of the mark "San Miguel Purefoods" under Application No. 78/495,689 to be used in connection with "meat, poultry and game; compotes" in International Class 29. The application was filed in the USPTO on October 6, 2004. This application has been refused registration by the Trademark Examiner in the USPTO on the contention that the mark would be likely to be confused with U.S. Registration No. 2,256,761.

WHEREAS, San Miguel Corporation is the owner of the trademark "SAN MIGUEL PUREFOODS CORNED BEEF and Design" under Application No. 78/495,686 to be used in connection with "meat; namely, corned beef; game; meat extracts; compotes" in International Class 29. The application was filed on October 6, 2004, and was refused registration by the Trademark Examiner

in the USPTO on the contention that the mark would be likely to be confused with U.S. Registration No. 2,256,761.

WHEREAS, San Miguel Corporation is the owner of the trademark "SAN MIGUEL PUREFOODS and Design" under Application No. 78/495,693 to be used in connection with "meat and poultry, namely canned corned beef, canned luncheon meat; canned liver spread, canned sausages, canned pork and beans, canned beef and beans, canned chicken chunks, meat extracts, and compotes," in International Class 29. This application was filed on October 6, 2004 and was refused registration by the Trademark Examiner in the USPTO on the contention that the mark would be likely to be confused with U.S. Registration No. 2,256,761.

WHEREAS, MTY San Miguel Distributors, LLC is the owner of the mark "SAN MIGUEL" under Registration No. 2,256,761, registered on June 29, 1999, by an Assignment from Power Distributing, LLC located at 185 Industrial Drive, Elmhurst, Illinois 60126, on October 26, 2006. The mark covers the goods: "processed peppers, dried beans, processed pumpkin seeds, processed edible corn husks, and shrimp" in International Class 29; "spices, candied nuts, candy, tea, brown sugar, sugar, and salsa" in International Class 30; "fresh peppers, fresh nuts, and fresh beans" in International Class 31, respectively. The date of use was claimed as June 1, 1994.

SAN MIGUEL CORPORATION filed a Petition for Cancellation against MTY SAN MIGUEL's registered mark under Registration No. 2,256,761 before

the Trademark Trial and Appeal Board of the U.S. Patent and Trademark Office under Cancellation No. 92046949.

Now, the parties, THEREFORE, in consideration of the foregoing facts, the parties are willing to resolve the controversy and agree as follows:

1. SAN MIGUEL CORPORATION and MTY SAN MIGUEL will recognize each other's trademarks as set forth hereinabove.

2. SAN MIGUEL CORPORATION will continue to use the mark "SAN MIG" in connection with beer.

3. SAN MIGUEL CORPORATION will use and register the mark "SAN MIG" in connection with "coffee, butter, margarine, canned and refrigerated meat and chicken products, canned beans, and canned pork/beef and beans, ice cream, mellorine, milk; cheese, cheese spreads/bread spreads; jellies, gelatins, flans; fruit juices and fruit drinks; ready-to-drink tea and pancake mix/flour mix."

4. SAN MIGUEL CORPORATION will continue to use the mark "SAN MIGUEL" in connection with beer and ale.

5. SAN MIGUEL CORPORATION will use and register the mark "SAN MIGUEL" in connection with the following goods: "coffee, butter, margarine, canned and refrigerated meat and chicken products, canned beans, and canned pork/beef and beans, ice cream, mellorine, milk; cheese spreads/bread spreads; jellies, gelatins, flans, fruit juices and fruit drinks and read-to-drink tea; and pancake mix/flour mix.



6. SAN MIGUEL CORPORATION will use and register the mark "SAN MIGUEL GOLD LABEL" under Application No. 78/921,340 for butter, cheese, in International Class 29; and ice cream and mellorine, in International Class 30.

7. SAN MIGUEL CORPORATION will use and register the mark "SAN MIGUEL PUREFOODS" as set forth in U.S. Application No. 78/495,689 in connection with meat, excluding dried meat products, but not excluding canned and refrigerated meats; poultry; and game. SAN MIGUEL CORPORATION will amend this application to limit the identification of goods set forth in this paragraph.

8. SAN MIGUEL CORPORATION will use and register the mark "SAN MIGUEL PUREFOODS CORNED BEEF and Design" as set forth in U.S. Application No. 78/495,686 in connection with meat, namely, corned beef, excluding dried meats, but not excluding canned and refrigerated meats and game. SAN MIGUEL CORPORATION will amend this application to limit the identification of goods set forth in this paragraph.

9. SAN MIGUEL CORPORATION will use and register the mark "SAN MIGUEL PUREFOODS and Design" as set forth in U.S. Application No. 78/495,693 in connection with meat, excluding dried meat but not excluding canned and refrigerated meats and poultry, namely canned corned beef, canned luncheon meat; canned liver spread, canned sausages, canned pork and beans, canned beef and beans, canned chicken chunks, meat extracts,

and compotes; excluding dried meat but not excluding canned and refrigerated meats; poultry and game; preserved, dried and cooked fruits; and eggs. SAN MIGUEL CORPORATION will amend this application to limit the identification of goods set forth in this paragraph.

10. MTY SAN MIGUEL will continue to use the registered mark as set forth in Registration No. 2,256,761 only in connection with "processed peppers, dried beans, processed pumpkin seeds, processed edible corn husks, and shrimp" in International Class 29; "spices, candied nuts, candy, tea, brown sugar, sugar, and salsa" in International Class 30; "fresh peppers, fresh nuts, and fresh beans" in International Class 31. MTY SAN MIGUEL agrees that it will not use or register any "SAN MIGUEL" mark alone or as part of any mark, including any consolidated or compound mark, in a form which would be the same as or similar to forms of San Miguel Corporation's "SAN MIGUEL" marks.

11. MTY SAN MIGUEL shall not use the mark "SAN MIGUEL" for any of the products indicated in this agreement to be covered by San Miguel Corporation's "SAN MIGUEL" mark, and for products which may subsequently be covered by trademark applications/registrations for "SAN MIGUEL" subject to the terms of this agreement. MTY SAN MIGUEL agrees that it will not use or register the mark "SAN MIG" alone or as part of any mark, including any consolidated or compound mark, for any product.

12. Nothing herein shall prevent San Miguel Corporation and its subsidiaries and related companies from subsequently registering and using

"SAN MIGUEL", alone or as part of any mark, including any consolidated or compound mark, for products other than those covered by MTY SAN MIGUEL's Registration No. 2,256,761 except as may be provided in this agreement.

13. Nothing herein shall prevent San Miguel Corporation and its subsidiaries and related companies from subsequently registering and using "SAN MIG," alone or as part of any mark, including any consolidated or compound mark, for any product.

14. Nothing herein shall prevent San Miguel Corporation and its subsidiaries and related companies whose corporate names include the term "San Miguel" from using or placing their respective corporate names on the labels, packaging, promotional or other materials of their respective products.

15. The parties agree not to, directly or indirectly, contest or interfere with each other's rights in their respective marks and agree not to file opposition or cancellation against each other's trademarks as long as each party is using its marks in accordance with the present Agreement.

16. This Agreement shall be binding upon SAN MIGUEL CORPORATION and MTY SAN MIGUEL, their successors and assigns, and upon individuals and entities acting under their direction, or in privity therewith as long as SAN MIGUEL CORPORATION and MTY SAN MIGUEL use their respective marks in the United States.

17. This Agreement is the sole and entire Agreement between the parties relating to the subject matter hereof, and supersedes all prior

understandings, agreements and documentation relating to such subject matter; and any modifications to this Agreement must be in writing and signed by both parties;

18. Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the UNCITRAL rules. The place of arbitration shall be in Illinois. The dispute, controversy or claim shall be decided in accordance with the laws of the United States.

If any provision in this Agreement is held by the arbitration to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way;

19. This Agreement will be governed by the laws of the United States;

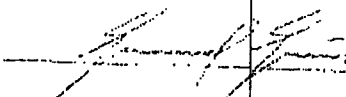
20. This Agreement does not create any agency or partnership relationship;

21. This Agreement is not assignable by either party without the prior written consent of the other party, except that this Agreement may be freely assigned by either party to a company acquiring the assets, including goodwill associated with the marks as identified in the applications and registration numbers listed above;

22. This Agreement and any counterpart original thereof and any Notices hereunder may, except as otherwise provided herein, be executed and transmitted by facsimile followed by mailing of the original. The facsimile signature shall be valid and acceptable for all purposes as if it were an original.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed in duplicate by individuals authorized to act on behalf of the parties.

SAN MIGUEL CORPORATION

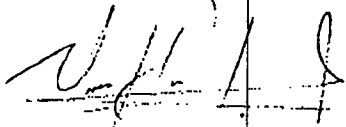
By: 

Typed Name: EMMANUEL E. ERAÑA

Title: Authorized Representative

Dated: October 16, 2008

MTY SAN MIGUEL DISTRIBUTORS, LLC

By: 

Typed Name: VICTOR SALINAS PINA

Title: PRESIDENT

Dated: OCTOBER 29, 2008